

Jason M. Leviton, *pro hac vice to be submitted*

Joel A. Fleming (281264)

Jacob A. Walker (271217)

**BLOCK & LEVITON LLP**

155 Federal Street, Suite 400

Boston, MA 02110

Telephone: (617) 398-5600

Email: [jason@blockesq.com](mailto:jason@blockesq.com)

[joel@blockesq.com](mailto:joel@blockesq.com)

[jake@blockesq.com](mailto:jake@blockesq.com)

*Attorneys for Plaintiff*

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

BRUCE MACDONALD, Individually and on  
Behalf of All Others Similarly Situated,

Plaintiff,

v.

DYNAMIC LEDGER SOLUTIONS, INC., a  
Delaware corporation, TEZOS  
STIFTUNG, a Swiss Foundation,  
KATHLEEN BREITMAN, an  
Individual, ARTHUR BREITMAN,  
an Individual, TIMOTHY COOK DRAPER, an  
individual, DRAPER ASSOCIATES, JOHANN  
GEVERS, DIEGO PONZ, GUIDO SCHMITZ-  
KRUMMACHER, BITCOIN SUISSE AG,  
NIKLAS NIKOLAJSSEN and DOES 1-100,  
INCLUSIVE,

Defendants.

Case No. 17-cv-07095-RS

**SUPPLEMENTAL DECLARATION OF  
JOEL FLEMING IN SUPPORT OF  
PLAINTIFF'S *EX PARTE*  
APPLICATION FOR TEMPORARY  
RESTRAINING ORDER**

1 I, Joel Fleming, depose and state:

2 1. I am an attorney licensed to practice in the State of California and before this  
3 Court. I am an attorney of record for Plaintiff Bruce MacDonald in the above-captioned matter.  
4 This declaration is based on my personal knowledge of the matters set forth herein. If called as a  
5 witness, I could and would testify competently as follows.

6 2. The website <http://www.reddit.com> hosts a message board (or “subreddit”) devoted to the Tezos project: <https://www.reddit.com/r/tezos>. In the last 24 hours, a user named  
7 “GuidoSchmitz”—who claims to be Defendant Guido Schmitz-Krummacher—has made a series  
8 of posts and comments on the Tezos subreddit disclosing additional information about the Tezos  
9 Foundation and the dispute amongst Defendants. Certain of those posts/comments are relevant to  
10 the issues presented by Plaintiff’s *Ex Parte* Application for a Temporary Restraining Order,  
11 scheduled to be heard by the Court tomorrow at 10:00 a.m.

12 3. At approximately 2:00 a.m. Pacific Time today, the GuidoSchmitz user account  
13 made the following post titled “Banks and Developers”:  
14

15 I can understand, that it seems to be very strange, that the foundation has so much money  
16 and is not paying the developers. Very strange! The truth behind it is: Budget was for  
17 sure released to pay the developers for may months and increase the number as well. But  
18 then the media about Tezos came in and made banks and authorities nervous. Really  
19 nearly over night the policy changed and stopped nearly everything. **Most of the banks  
20 in Switzerland and are not paying out any more Fiat, which origin was an ICO or  
21 Crypto - or only after a very deep check and only to really external / third partners.**  
22 So - according to Tezos Media - a couple of foundations searching for new banks and this  
23 is extremely difficult in Switzerland or else to get one. And Tezos is a black sheep now  
24 anyway. So the remaining board needs your full support, that this topic is solved. And  
25 positive news about Tezos! So all the people coming up with legal claims are just doing  
26 the opposite. As mentioned before - the money and assets have still been there, when I  
27 left. But the board has to work to get the flexibility back, to support all needed projects  
28 including developers (and increase of the number of developers as well).

(emphasis added)

29 4. A true and accurate copy of the Reddit website showing this post is attached  
30 hereto as Exhibit A.

31 5. In a comment to another user’s post, made at approximately 6:00 a.m. Pacific

1 time today, the GuidoSchmitz user account stated:

2 **banks don't want to do any transactions on money raised up for crypto**  
3 **without KYC [Know Your Customer].** But they are not treating this all aligned.  
4 But Tezos has a case on that and the board is hard working to solve it. All  
5 knowing, that Tezos needs motivated developers to finish the protocol.  
6 (emphasis added)

7 6. A true and accurate copy of the Reddit website showing this comment is attached  
8 hereto as Exhibit B.

9 I declare under penalty of perjury that the foregoing is true and correct.

10 Executed on December 18, 2017.

11 /s/ Joel Fleming  
12 Joel Fleming  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

Pursuant to L.R. 5-5, I certify that on December 18, 2017, I caused to be served copies of the foregoing **SUPPLEMENTAL DECLARATION OF JOEL FLEMING IN SUPPORT OF PLAINTIFF'S EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER** on the persons listed below at the addresses listed below.

Daniel Louis Sachs  
COOLEY LLP  
1299 Pennsylvania Ave NW  
Suite 700  
Washington, DC 20004  
Telephone: (202) 728-7114  
Facsimile: (202) 842-7899  
[dsachs@cooley.com](mailto:dsachs@cooley.com)

Brian E. Klein (258486)  
Scott M. Malzahn (229204)  
BAKER MARQUART LLP  
2029 Century Park East, Suite 1600  
Los Angeles, CA 90067  
Telephone: (424) 652-7814  
Facsimile: (424) 652-7850  
[bklein@bakermarquart.com](mailto:bklein@bakermarquart.com)  
[smalzahn@bakermarquart.com](mailto:smalzahn@bakermarquart.com)

Jeffrey Michael Kaban  
Patrick Edward Gibbs  
Samantha Anne Kirby  
COOLEY LLP  
3175 Hanover Street  
Palo Alto, CA 94304  
Telephone: (650) 843-5000  
Facsimile: (650) 849-7400  
[kabanjm@cooley.com](mailto:kabanjm@cooley.com)  
[pgibbs@cooley.com](mailto:pgibbs@cooley.com)  
[skirby@cooley.com](mailto:skirby@cooley.com)

*Counsel for Arthur Breitman and Kathleen Breitman*

Timothy Cook Draper  
Draper Associates  
55 E. 3<sup>rd</sup> Avenue  
San Mateo, CA 94401  
[plans@draper.vc](mailto:plans@draper.vc);  
[timothy@dfj.com](mailto:timothy@dfj.com);  
[mail@drapervc.com](mailto:mail@drapervc.com);  
[timothy.draper@msn.com](mailto:timothy.draper@msn.com);  
[tim@drapervc.com](mailto:tim@drapervc.com);  
[tdraper@prosper.com](mailto:tdraper@prosper.com);  
[tim@prosper.com](mailto:tim@prosper.com).

*Counsel for Distributed Ledger Solutions, Inc.*

Neal A. Potischman  
DAVIS POLK & WARDWELL LLP  
1600 El Camino Real  
Menlo Park, CA 94025  
[neal.potischman@davispolk.com](mailto:neal.potischman@davispolk.com)  
+1 (650) 752-2021 phone  
+1 (650) 752-3621 fax

Johann Gevers  
c/o Tezos Stiftung  
Alpenstrasse 9  
6300 Zug  
Switzerland  
[johann@gevers.net](mailto:johann@gevers.net); [johann@monetas.net](mailto:johann@monetas.net);  
[jgevers@monetas.net](mailto:jgevers@monetas.net);  
[johann.gevers@monetas.net](mailto:johann.gevers@monetas.net);  
[johanngevers@monetas.net](mailto:johanngevers@monetas.net);  
[johann@gevers.net](mailto:johann@gevers.net).

*Counsel for Tezos Stiftung*

Diego Ponz  
c/o Tezos Stiftung  
Alpenstrasse 9  
6300 Zug  
Switzerland

Guido Schmitz-Krummacher  
c/o Tezos Stiftung  
Alpenstrasse 9

1 [Contact@tezos.ch](mailto:Contact@tezos.ch); [support@tezos.ch](mailto:support@tezos.ch);  
2 [diegoolivierfernandezpons@gmail.com](mailto:diegoolivierfernandezpons@gmail.com).

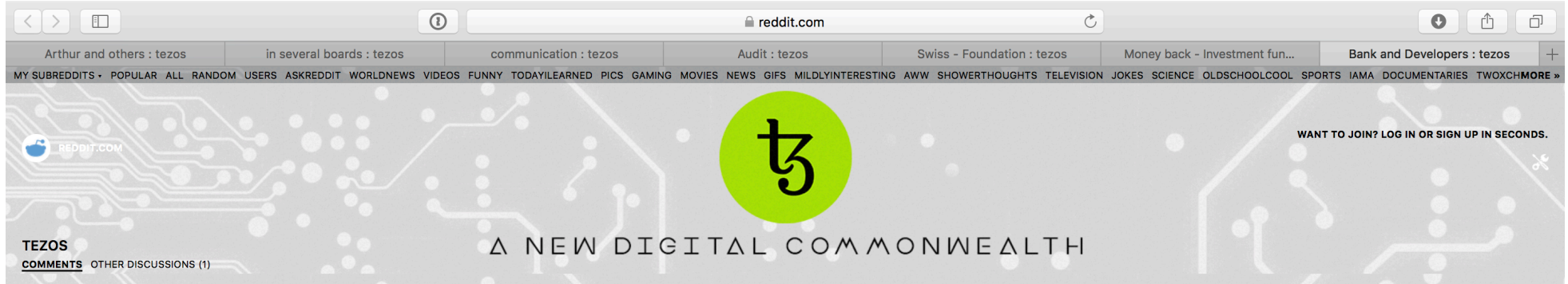
3 Niklas Nikolajsen  
4 Bitcoin Suisse AG  
5 Park Résidence  
6 Industriestrasse 16  
7 CH-6300 Zug  
8 Switzerland  
9 [inquiry@bitcoinsuisse.ch](mailto:inquiry@bitcoinsuisse.ch)

6300 Zug  
Switzerland  
[guido.schmitz-  
krummacher@krummacher.com](mailto:guido.schmitz-krummacher@krummacher.com);  
[guido.schmitz-krummacher@talentory.com](mailto:guido.schmitz-krummacher@talentory.com);  
[guido@addcon.nl](mailto:guido@addcon.nl);  
[guidoschmitzkrummacher@addcon.nl](mailto:guidoschmitzkrummacher@addcon.nl);  
[gschmitzkrummacher@addcon.nl](mailto:gschmitzkrummacher@addcon.nl);  
[guidos@addcon.nl](mailto:guidos@addcon.nl);  
[guido.schmitzkrummacher@addcon.nl](mailto:guido.schmitzkrummacher@addcon.nl).

10 Dated: December 18, 2017

11 /s/ Joel A. Fleming  
12 Joel A. Fleming  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# **Exhibit A**



## WELCOME TO REDDIT.

Where a community about your favorite things is waiting for you.

[BECOME A REDDITOR](#)

and subscribe to one of thousands of communities.



19



**Bank and Developers** (self.tezos)  
submitted 5 hours ago by [GuidoSchmitz](#)

I can understand, that it seems to be very strange, that the foundation has so much money and is not paying the developers. Very strange! The truth behind it is: Budget was for sure released to pay the developers for may months and increase the number as well. But then the media about Tezos came in and made banks and authorities nervous. Really nearly over night the policy changed and stopped nearly everything. Most of the banks in Switzerlandand are not paying out any more Fiat, which origin was an ICO or Crytpo - or only after a very deep check and only to really external / third partners. So - according to Tezos Media - a couple of foundations searching for new banks and this is extremly difficult in Switzerland or else to get one.And Tezos is a black sheep now anyway. So the remaining board needs your full support, that this topic is solved. And positive news about Tezos! So all the people coming up with legal claims are just doing the opposite. As mentioned before - the money and assets have still been there, when I left. But the board has to work to get the flexibility back, to support all needed projects including developers (and increase of the number of developers as well).

28 comments share save hide report

all 28 comments

sorted by: **best**

### WANT TO ADD TO THE DISCUSSION?

Post a comment!

[CREATE AN ACCOUNT](#)

[-] [tokyo\\_on\\_rails](#) 7 points 4 hours ago

You have over a billion dollars in crypto and you can't figure out how to pay for something without Swiss fiat?

permalink embed save report reply

[-] [cryptoaccount2](#) 1 point 4 hours ago

*Some of you asked, why the foundation can not just give the money back?*

*Please read my post about Swiss Foundation. Conclusion is, if money is given to a foundation, you can not reimburse it, because you have certain laws and regulations hindering it. Please listen here not only to rumors or attorneys, who will tell you alot of rumors and stories. Make yourself familiar with the foundation construction. Normally - if money was*

search



this post was submitted on 18 Dec 2017

**19 points** (89% upvoted)

shortlink: <https://redd.it/7kk91v>

☐ remember me [reset password](#)

[LOGIN](#)



[SUBMIT A NEW LINK](#)



[SUBMIT A NEW TEXT POST](#)

### TEZOS

[SUBSCRIBE](#)

5,963 readers

170 users here now

Tezos is a new decentralized blockchain that governs itself by establishing a true digital commonwealth. It facilitates formal verification, a technique which mathematically proves the correctness of the code governing transactions and boosts the security of the most sensitive or financially weighted smart contracts.

- [GitHub](#)
- [technical questions](#)
- [landing page](#)
- [fundraiser announcements](#)
- [the deck](#)
- [position paper](#)
- [white paper](#)
- [YouTube](#)
- [Twitter](#)
- [Public Moderation Log \(mirror\)](#)


# **Exhibit B**





**WELCOME TO REDDIT.**  
Where a community about your favorite things is waiting for you.

**BECOME A REDDITOR** and subscribe to one of thousands of communities.

20  **Swiss - Foundation** (self.tezos)  
submitted 5 hours ago by [GuidoSchmitz](#)  
36 comments share save hide report

sorted by: **best** ▼

**WANT TO ADD TO THE DISCUSSION?**

Post a comment!

**CREATE AN ACCOUNT**


you are viewing a single comment's thread.  
[view the rest of the comments](#) →

▲ [-] [GuidoSchmitz](#) **S** 2 points 2 hours ago

banks don't want to do any transactions on money raised up for crypto without KYC. But they are not treating this all aligned. But Tezos has a case on that and the board is hard working to solve it. All knowing, that Tezos needs motivated developers to finish the protocol.

[permalink](#) [embed](#) [save](#) [parent](#) [report](#) [reply](#)

▲ [-] [blindripper85](#) 1 point 2 hours ago

search 

this post was submitted on 18 Dec 2017

**20 points** (88% upvoted)

shortlink: <https://redd.it/7kkc13>

username

password

☐ remember me [reset password](#)

**LOGIN**



**SUBMIT A NEW LINK**



**SUBMIT A NEW TEXT POST**

**TEZOS**

**SUBSCRIBE**

5,963 readers 208 users here now

Tezos is a new decentralized blockchain that governs itself by establishing a true digital commonwealth. It facilitates formal verification,